

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

CONNIE LEE LEON,

Plaintiff,

v.

Commander, Center Judge Advocate,

Defendant.

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CIVIL ACTION NO.

SA-10-CV-0162 OG

ORDER DENYING REQUEST FOR APPOINTED COUNSEL

This order addresses plaintiff Connie Lee Leon's motion for appointment of counsel.¹ The Fifth Circuit has instructed courts to appoint counsel in exceptional circumstances, after considering the following factors: "(1) the type and complexity of the case, (2) whether the indigent is capable of adequately presenting his case, (3) whether the indigent is in a position to investigate adequately the case, and (4) whether the evidence will consist in large part of conflicting testimony so as to require skill in the presentation of evidence and in cross examination."² After considering the factors, I do not find exceptional circumstances here.

Leon filed a complaint naming the Commander Center Judge Advocate as defendant.³ Leon's legal claims are difficult to discern, but she appears to allege causes of action for medical malpractice and battery against the U.S. Army, based on treatment by a Brooke Army Medical Center urologist. In the complaint, Leon complained about an allegedly unnecessary medical

¹Docket entry # 2.

²*Ulmer v. Chancellor*, 691 F.2d 209, 213 (5th Cir. 1982) (citations omitted).

³Docket entry # 1.

procedure and resulting complications. The law and burdens in regard to claims of medical malpractice and battery are well-settled. Leon's allegations present no novel issues of law.

Leon is capable of adequately investigating her case. Leon's complaint indicates that she has pursued an administrative claim under the Federal Tort Claims Act, communicating with an attorney advisory with the Office of the Center Judge Advocate. Leon also indicated that she previously served in military service where she would have received education and/or training that would assist her in communicating with others and navigating the military grievance system. The pleadings filed thus far indicate that Leon can investigate and present her case without the assistance of counsel, to include cross-examining witnesses who may contradict her version of facts. The motion for appointment of counsel (docket entry # 2) is DENIED.

SIGNED on March 1, 2010.

A handwritten signature in black ink, reading "Nancy Stein Nowak", written over a horizontal line.

NANCY STEIN NOWAK
UNITED STATES MAGISTRATE JUDGE